Davenport CSD/Davenport Assn. of Para Educators

2001-02
CEO 825
SECTOR 3

In the Matter of Interest Arbitration Between

Davenport Community School District Public Employer and Davenport Association of Para-educators Employee Organization	Interest Arbitration Award Paul Lansing Arbitrator

APPEARANCES

For the District:

Brian Gruhn	Attorney and Spokesman
Donald C. Hoskins	Attorney and Spokesman
Gary Ray	District Representative

For the Association:

Ty Cutkomp	AFSCME Representative and Spokesman
Laura Peters	Para-educator
Barbara Lange	Para-educator
Rebecca Kammerer	Para-educator

AUTHORITY

This proceeding arises pursuant to the provisions of Section 19 and 22 of the Iowa Public Employment Relations Act, Chapter 20, 1991 Code of Iowa (hereinafter Act). The Davenport Community School District (hereinafter District) and the Davenport Association of Para-educators (hereinafter Association) were unable to agree upon the terms of their collective bargaining agreement for the 2003 fiscal year (July 1, 2002-June 30, 2003) through their

negotiations and mediation. In addition, a fact finding hearing was conducted before Fact Finder Sharon A. Gallagher on May 15, 2002 in Davenport, Iowa. Her recommendations for the resolution of the dispute between the parties was issued on May 27, 2002. However, the District rejected the Fact Finders recommendations. In view of the parties continued disagreement, and in accordance with Section 22 of the Act, the undersigned was selected as the single arbitrator from a list provided by the Iowa Public Employment Relations Board.

An arbitration hearing was held in Davenport, Iowa on August 16 and 17, 2002 and was completed then. During the hearing, all parties were provided full opportunity to present evidence and argument in support of their respective positions. The hearing was mechanically recorded by the Arbitrator pursuant to the regulations of the Iowa Public Employment Relations Board.

BACKGROUND

The District is located on Iowa's eastern border midway between Chicago and Des Moines. The District is approximately 107 square miles and includes nearly all of the city of Davenport and the outlying towns of Blue Grass, Buffalo, Walcott and Plain View. The District operates 36 attendance centers, including 23 elementary schools, 6 intermediate schools, 3 high schools and 4 alternative or specialized programs. The District ranks 3rd in Iowa in total enrollment and it employs approximately 2,500 full and part-time employees. There are a total of 6 bargaining units in the school district. They are Maintenance, Food Service & Nutrition, Secretaries, Custodial/Printing/Warehouse, Teachers and Para-educators. In addition, there is a non-

represented employee group made up mostly of administrative, managerial and confidential employees.

In this dispute, the parties are coming off a one year agreement which was entered into voluntarily after fact finding (Joint Exhibit #1). However, the parties have not been able to come to an agreement now.

While there is no explicit criteria in the Iowa statute by which an arbitrator is to judge the reasonableness of the parties' bargaining proposals, Section 22, paragraph 9 of the Iowa Public Employment Relations Act provides guidance for interest arbitrators in rendering awards. In this respect the statute, in relevant part, provides:

1. The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors;

    a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.

    b. Comparison of wages hours and conditions of employment of the involved public employees doing comparable work, given consideration to factors peculiar to the area and the classification involved.

    c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments, and the effect of such adjustments on the normal standard of services.

    d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

In addition, Section 17, paragraph 6 of the statute provides that:

> "No collective bargaining agreement or arbitrator's decision shall be valid or enforceable if it's implementation would be inconsistent with any statutory limitation on the public employer's funds, spending or budget, or would substantially impair or limit the performance of any statutory duty of the public

employer."

The award on the impasse items at issue herein is made with due regard to each of the above criteria, as further discussed below.

IMPASSE ITEMS

The parties remain at impasse on the following items:

Wage Rates

Life and Long Term Disability Insurance

Holidays - Children's Village at Hoover

In regard to the impasse items, the following positions were presented at the arbitration hearing:

Wage Rates

District Position:	Wage Schedules A & B $6.30 rate + 20 cents per hour on 7/1/02 All other rates + 6 cents per hour on 7/1/02
Fact Finder Position:	Wage Schedules A & B $6.30 rate + 25 cents per hour on 7/1/02 +15 cents per hour on 4/1/03 All other rates + 20 cents per hour on 7/1/02 + 5 cents per hour on 4/1/03
Union Position:	Wage Schedules A & B $6.30 rate + 25 cents per hour on 7/1/02 + 20 cents per hour on 4/1/03 All other rates + 20 cents per hour on 7/1/02 + 10 cents per hour on 4/1/03

Insurance

a) Life Insurance
District Position: Current Contract
Fact Finder Position: $5000 if working 5 hours or more
Union Position: $5000 if working 5 hours or more

b) Long Term Disability Insurance
District Position: Current Contract
Fact Finder Position: All employees working 5 hours or more
Union Position: All employees working 5 hours or more

Holidays - Children's Village at Hoover

District Position: Except from Friday after Thanksgiving and add New Year's Eve Day

Fact Finder Position: Current Contract
Union Position: Current Contract

POSITION OF THE PARTIES

DISTRICT - The arguments put forth by the District center upon the inexperience of the Fact Finder and the dismal financial condition of the District. The District notes that this was the first interest fact finding done by the Fact Finder in Iowa and that her inexperience and lack of familiarity with the conditions and law of Iowa led her to make poor decisions in her recommendations. The District argues that her inexperience caused her to focus on the low initial wage rate of $6.30 per hour rather than consider the total package cost to the District. Further, because she was "blinded" by the low starting wage, she did not adequately consider the comparability component of her recommendations, especially to the other schools in the Urban Eight and other Conference schools.

In addition, the poor financial condition of the District requires it to maintain fiscal prudence when negotiating with the Association. The Districts budget balance will be in the negative by approximately $3 million and it has a negative solvency ratio. Among the Urban Eight, the District is the only school with a negative balance. Importantly, the District notes the impact of the $2.7 million state cut in 01-02 and the more than $2 million the state will not pay in 02-03 that was previously promised and budgeted.

Lastly, the District argues that the Association voluntarily bargained from an entry wage of $7.15 in 1998 to $6.00 in return for which the current employees received higher wages. Just because the present entry wage is low does not reflect on the wishes of the District but rather on the District agreeing to the past wishes of the Association in prior bargaining between the parties.

ASSOCIATION - The Association highlights in its presentation that, although the District has financial concerns, in year 00-01 the voluntary total package reached between the parties was 7.10% and that after fact finding in year 01-02 the voluntary total package increase was 9.15%. Both the FY 00-01 and FY 01-02 voluntary settlements occurred in a financial climate not wholly dissimilar to the present day. The Association contends that the recommendations of the Fact Finder are consistent with the settlements reached during recent bargaining history between the parties. Past collective bargaining contracts between the parties and the bargaining that led up to such contracts are one of the factors listed in 20.22 (9) of the Iowa Code (Union Exhibit #13). The Association maintains that the total cost of the Fact Finder's recommendations results in a 6.43% increase in the total package (Union Exhibit #12).

Regarding the poor financial condition of the District, the Association argues that it is in

part the Districts fault that they find themselves in that position. Examples noted are low class sizes, middle school concept and all day kindergarten. The Association concludes that the District should not be allowed to spend to zero on non-state mandated programs and then claim lack of funds in negotiation. In addition, the Association argues that many District financial concerns can be traced to not adequately levying cash reserves in prior years (Union Exhibit #11). While the Association recognizes that many of the District initiatives noted above are costly responses to the decrease in the number of students caused by open enrollment and that there was no way to foresee the large reductions in state contributions to the District, the members of this Association should not have to bear the burden of these losses.

Lastly, the Association counters the Districts position on the experience of the Fact Finder by noting that she has been a labor arbitrator, contract and grievance mediator for the Wisconsin Employment Relations Commission since 1984. Prior to that, she was a trial attorney for the National Labor Relations Board from 1976 to 1984. She is also listed with the Coal Arbitration Service, the Social Security/AFGE Panel, American Arbitration Association and the Federal Mediation and Conciliation Service (Union Exhibit #10).

DISCUSSION

It is usually the case that at an arbitration hearing the Association will be responsible to carry the burden of going forward. This is because it is usually the Association that is requesting some new benefits or language be added to the existing contract. However, the dynamics of this hearing, which lasted two full days, was altered by the fact that the Fact Finder Report so closely

mirrored the position of the Association. Therefore, it became incumbent upon the District here to demonstrate why the Fact Finder Report was lacking and required changes in her recommendations. Since arbitrators overwhelming sustain Fact Finder recommendations, it became the District who essentially became responsible to carry the burden of going forward.

Toward that end, the District representative noted that this was the first interest arbitration in Iowa that this Fact Finder had been assigned and was therefore considered inexperienced. Because of this inexperience, the District representatives maintained that she came up with the wrong recommendations in her report. In support of that position, I was consistently referred to during the hearing as a very experienced arbitrator in Iowa.

I have read the Fact Finder's Report and found it to be extremely well written, very thoughtful and complete. I am quite confident that had the Fact Finder adopted the District positions in her report, the District representatives would instead now be praising her sagacity in this matter. While I understand why the District representatives wanted to place some doubt upon the wisdom of the Fact Finder's Report, I do not think that raising the experience factor was a compelling tactical move. Besides, if the District representatives were so concerned about a Fact Finder new to Iowa, they had the opportunity to strike her name from the list sent by the Public Relations Employment Board in favor of more experienced neutrals.

Wages. The District maintains that the wage recommendation by the Fact Finder was out of line with other settlements across the state. Toward that end, the District compared wages to the Urban 8, other conference schools and a new grouping created for this hearing - Twenty Largest Schools or Big 20. The problem in trying to make all these comparisons is that it is often

an attempt to compare apples and oranges. Some comparison schools have steps within their wage schedule while this District has none. Some schools have longevity provisions that kick in at various lengths of service, while this District has a new provision for 10 or 20 years of service. Some schools have decided to use money for health insurance costs instead of wages, often for contributions toward family health insurance which this District does not offer.

It seems clear that here the low entry wage of $6.30 per hour stands out when looking at any comparison. The District spent a considerable amount of time comparing this District with the Waterloo District. In District Exhibit #I-24, it notes that two neutral rulings have been issued this year for classified units, one at Davenport and one at Waterloo and both involve the para-employees. The Waterloo unit also includes the secretarial employees. Then at District Exhibit #I-25, it shows that raw wages at Waterloo start at $7.00, a 70 cents per hour difference. Somewhat cleverly, the exhibit then compares raw wages at the highest point to show Davenport at a $1.32 per hour advantage when the District knows that the overwhelming majority of workers in this bargaining unit are at the low raw wage and that the Waterloo unit has a step schedule within its wage history.

As both representatives to this arbitration hearing were new to this District-Association forum, there was considerable disagreement as to why and how this bargaining unit had such a low starting wage. As noted earlier, the bargaining history demonstrates that the introductory wage rate in 1998-99 was $7.15, 85 cents higher than it is now. At the hearing, there was testimony introduced by both parties to show that it was the other who originally proposed this decrease. Neither party chose to introduce testimony as to why the non-originating party elected

to go along with this wage reduction.

In great part, the District wanted to focus on the Waterloo Fact Finder Report because it is really the only new development since the Davenport Fact Finder Report and because it was done by someone who has more Iowa interest arbitration experience. However, I have already noted the merits of the Davenport Fact Finder Report and it is my understanding that the Waterloo Fact Finder Report was not accepted by their Association and binding arbitration will be conducted next month by Arbitrator Richard Pegnetter. So while interesting for comparison, it is in no way compelling here.

While the District did not make a claim of inability to pay, it did make the claim of difficulty to pay. If one looks back on the budgetary history of this District, it is apparent that implementation of the state policy of open enrollment has had a profound budgetary effect. The District suffered a loss of students, and a loss of money, but neither party discussed the reasons for this loss at the hearing. To respond to this enrollment loss, the District has implemented such initiatives as low class size, middle school concept and all day kindergarten. While the District deserves praise for these initiatives, they are costly responses. All of these initiatives have contributed to the present financial condition of the District. Any wage increase sought here by the Association does not go to the creation of the financial situation the District now finds itself in.

Both the Association and the Fact Finder emphasize the recent past settlements reached between the parties. The voluntary settlements in the Para-employee unit here in total package have been: 1998-99 = 5.93%, 1999-00 = 1.45%, 2000-01 = 7.1%, 2001-02 = 9.15%. In light of

this recent settlement history, the Association seeks a 7.83%, the Fact Finder recommended a 7.19% and the District seeks a 4.75% total package (District Exhibit C-2). If one were to average the past four years, it would come to 5.9%, about midway between the District and Fact Finder positions.

Considering all the above factors, and in light of what I will note on the insurance impasse items, I think the Fact Finder's recommendation is the most reasonable position put forward. It addresses the concerns of the Association and is in line with recent settlements reached between these parties.

Insurance. From testimony at the hearing, the impasse items of life insurance and long term disability insurance appear as a matter of dispute for the first time between the parties this year. These items were not even part of the negotiations between the parties last year. The Association proposes that a new section be added to Article 13, Section 7 of the Agreement to read as follows:

> "Effective January 1, 2003, a life and accidental death and dismemberment insurance policy in the amount of $5,000 shall be furnished to all employees scheduled to work five (5) hours or more per day."
>
> "Effective January 1, 2003, a long-term disability insurance policy shall be furnished to all employees scheduled to work five (5) hours or more per weekday. Terms and conditions shall be the same as those currently in effect under the DCSD group long-term disability plan."

It appears that the Fact Finder recommended adoption of the new life insurance provision and long-term disability insurance provision. The District argues that neutrals do not normally award new benefits or language without a showing by the requesting party that they critically

need such a change and the other party refuses to cooperate.

I find myself agreeing with the District on this issue. Although the Fact Finder noted that all internal units except the Para-educators have these benefits fully paid by the District presently and that almost all comparable schools have these benefits, I would prefer to see this be a subject of negotiation between the parties over time before imposing this upon the parties.

Holidays. The District maintains that because of parent input this past year, they wish to include in the Agreement a change in holidays at the Children's Village at Hoover. Their argument is that since a change was made this past year to accommodate parents it has now become a "past practice." The Association does not want any new inclusion and the Fact Finder found insufficient evidence to prove a true past practice.

As in my discussion about insurance above, I believe that this is a matter best negotiated between the parties, especially in light of its being such a recent development for consideration. Surely, a one year accommodation does not constitute a past practice between the parties.

CONCLUSIONS OF LAW

Pursuant to Section 22 (10) of the Act, and in accordance with the criteria set forth in Section 22 (9), the arbitrator finds, for the reasons set forth above, that the following constitute the "most reasonable" offers of the final offers on the impasse items set forth below. They are hereby awarded:

IMPASSE ITEM - WAGES

The Fact Finder's recommendation.

IMPASSE ITEM - INSURANCE

The District's final offer.

IMPASSE ITEM - HOLIDAY

The Association's final offer and Fact Finder's recommendation.

Paul Lansing

Champaign, Illinois

August 29, 2002

Paul Lansing

Arbitrator

CERTIFICATION OF SERVICE

I certify that on the 29th day of August, 2002, I served the foregoing Award of Arbitrator upon each of the parties to this matter by mailing a copy to them at their respective addresses as shown below:

Gary Ray
4403 First Avenue, S.E.
Cedar Rapids, IA 52402

Ty Cutkomp
33 Oak Lane
Davenport, IA 52803

I further certify that on the 29th day of August, 2002, I will submit this Award for filing by mailing it to the Iowa Public Employment Relations Board, 514 East Locust, Suite 202, Des Moines, IA 50309.

Paul Lansing

Paul Lansing, Arbitrator